

United States Supreme Court.

OCTOBER TERM, 1912.

No. 78.

U.S. Supreme Court, U. S.
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CARONDELET CANAL AND NAVIGATION
COMPANY,

Plaintiff in Error,

versus

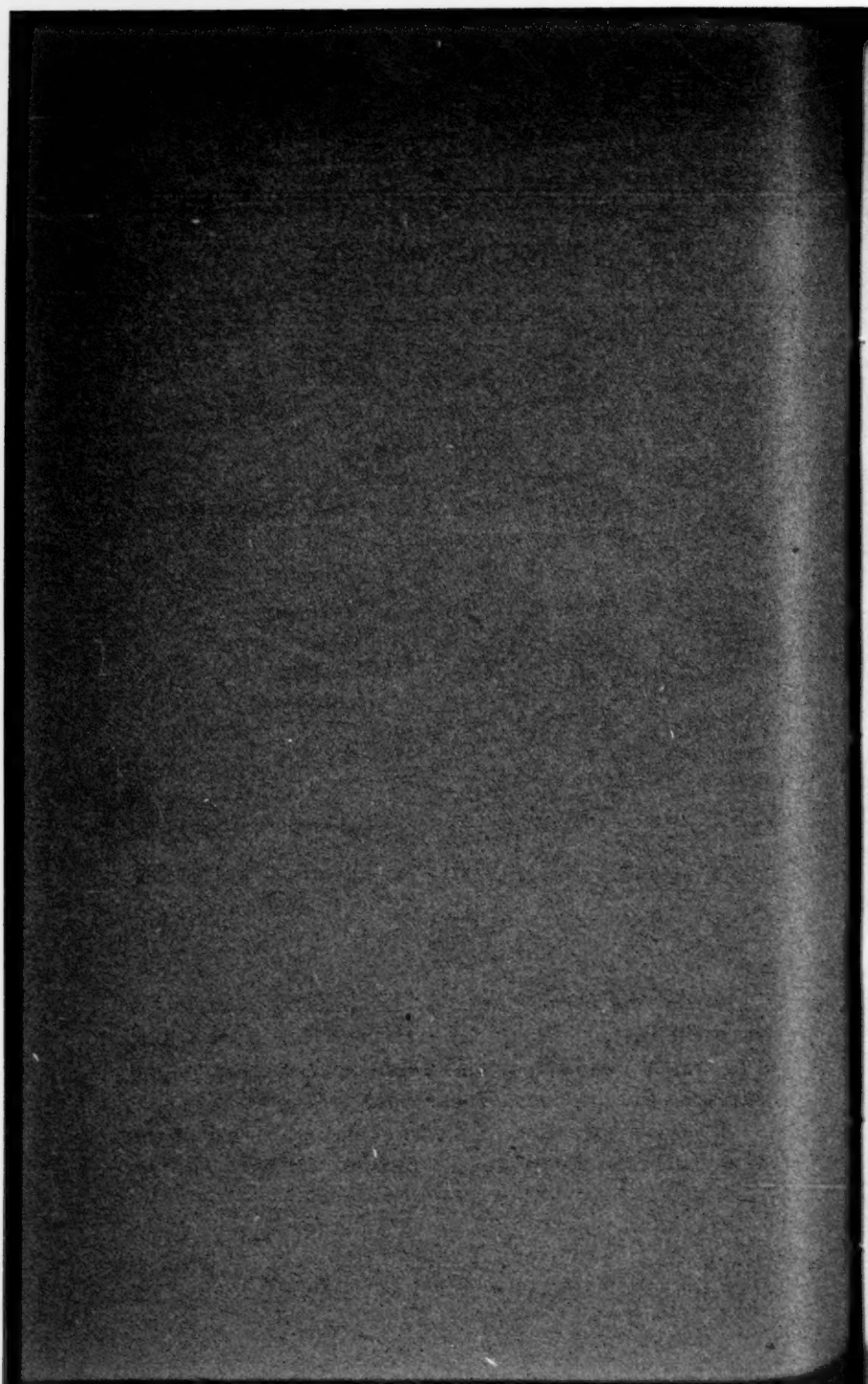
THE STATE OF LOUISIANA,

Defendant in Error.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

EDGAR H. FARRAR,
BENJ. T. WALDO,
WM. C. DUFOUR,

Counsel for Plaintiff in Error.



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THE STATE OF LOUISIANA,

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SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

I.

In the original brief filed by the plaintiff in error the discussion was confined strictly to the merits of the case, and, as no motion was made to dismiss the writ of error, we did not discuss the question as to our right to the writ.

It is now suggested in the brief filed in behalf of the State that this Court should dismiss the writ on two

grounds—*first*, because the judgment of the Supreme Court of Louisiana is not final; and, *second*, because there is no Federal question raised on the record.

FIRST. The judgment of the Supreme Court is final in form and in substance, as it decides the right to the property in contest, and directs it to be delivered up by the defendant to the State, the plaintiff in the action, and the plaintiff is entitled to have such decree carried immediately into effect. There is no Federal question, and no undisposed of right or title on the reservations made in the decree to dispose of which the cause is remanded. The Court below would be compelled to execute immediately the judgment of the Supreme Court, to eject the defendant from all of the rights and property which it claims, and in support of which claims it urges the Federal rights. The Court below has no power except to hear and determine the matters reserved. The matters reserved are merely incidental to the main decree on question of title. The question of title is finally adjudged.

The decree on rehearing is:

"It is ordered that the decree heretofore handed down in this cause be recast and made the *final decree* of the Court as follows—to wit:

"It is, therefore, ordered that the judgment appealed from be annulled, avoided and reversed, and that there now be judgment in favor of plaintiff, the State of Louisiana, and against the defendant * * * *ordering the delivery* by said liquidators to the State of Louisiana of the waterway known as the Carondelet Canal and Bayou St. John and Old Basin, *in its entirety*, as it stood on March 10, 1908, together with ALL THE PROPERTY and IMPROVEMENTS APPURTENANT thereto, including the roadway or roadways upon the side or sides of said waterway."

This main clause, or first part of the decree, adjudges to the State and orders the defendants to deliver three things: (1) the waterway; (2) all *property* appurtenant thereto; (3) all *improvements* appurtenant thereto, inclusive of the roadways. There being no inventory or description in the record of the property and improvements appurtenant to the waterway, the Court could not, and did not, describe or indicate them, or any of them, except the roadways.

The decree proceeds:

"It is further ordered that whatever claims the State or the defendant may have to the triangular strip of ground described in the petition, or to the proceeds thereof, or to any other property, movable or immovable, NOT APPURTENANT to said waterway and roadways, are hereby reserved for further adjudication in this proceeding, with leave to the parties to amend their pleadings."

This second clause of the decree simply leaves open the question as to what is and what is not appurtenant to the waterway and roads. Everything which may be appurtenant to the waterway and roads is already adjudged to be delivered to the State. The question as to whether this, that or the other is *property* or an *improvement* appurtenant in its nature to the waterway or the roadways, is a mere matter of detail incident to the execution of the decree. The disputed triangle itself is one of the details. If it is appurtenant, it goes to the State. If it is not appurtenant, it goes to defendant. The Court could not determine in this case whether it was appurtenant or not, and left that question of fact open.

The decree proceeds:

"It is further ordered that said defendant and said liquidators render an accounting showing their receipts and disbursements in the management of said property since March 10, 1908."

This third clause of the decree is the mere necessary incident and result of adjudging the question of title. The claim of the State having been denied in the lower court, its incidental claim for an accounting was denied also, and the Supreme Court having adjudged the State entitled to take possession of, or in some sense to recover the property from the defendant, and having ordered the defendant to deliver possession of all the property claimed by the State in the possession of the defendant, the State was further entitled to a decree for rents and revenues as a mere incident of the final decree in its favor on the main questions.

The decree proceeds:

"It is further ordered that this cause be remanded to the District Court for further proceedings *on all questions reserved as above stated*, and that the right of the plaintiff to obtain judgment for such an amount as may be found due upon defendant's accounting, and to take such further proceedings and obtain such farther orders as may be required for the execution of this judgment be reserved. It is further ordered that defendant pay all costs."

None of the matters reserved affect the obligation of defendant to deliver up to plaintiff what it claims to be its own property and property rights, protected from the State's action by the Constitution of the United States. On

that question of Federal right it is entitled to the judgment of this Court, and it is entitled to suspend the execution of the decree, which ousts it of possession and control of these rights, until the judgment of this Court can be obtained.

If the defendant cannot take its writ of error to this court in this case at this stage of the case, at what stage of the case can it take such writ? If this case is permitted under this decree to go back to the District Court of Louisiana, in which it originated, what will there take place? A writ will immediately issue putting the State officers in possession and control of the Basin, Canal and Bayou St. John, the roadways on the side, and all the "*property and improvements appurtenant thereto.*" The Court would then proceed to determine whether the triangle, or its proceeds in dispute, is appurtenant to the canal, basin and bayou, and, if it so finds, a writ will issue putting the State in possession. The defendant will be called on to file an account of its gestion of the property and a judgment will be entered against it for the net amount of such revenues.

No Federal question now in the record would be applicable to these incidental questions.

After the case goes back to the lower court on the reserved matters, and the writ of possession has issued and the defendant is ousted of its property, the State may abandon its claim for an accounting, and abandon also its claim for the triangle. How could the defendant then protect itself?

To hold that the defendant cannot at this stage of the case prosecute its writ of error to this Court would wholly defeat the appellate jurisdiction of this Court under the Constitution and laws of the United States.

This case is controlled by the doctrine of *Forgay vs. Conrad*, 6 Howard, 201. In that case the decree declared

that certain deeds should be set aside as fraudulent; that certain lands and slaves should be delivered up to the complainant; that one of the defendants should pay a certain sum of money; that the complainant should have execution for these several matters; that the Master should take an account of the profits of the land and slaves, and also an account of certain money and notes; that so much of the bill as contains or relates to matters referred to the Master for report is retained for further decree in the premises, etc.

The Court held that this was a final decree, saying:

"In the case of *Whiting vs. The Bank of the United States*, 13 Peters, 15, it was held that a decree of foreclosure and sale of mortgaged premises was a final decree, and the defendant entitled to his appeal without waiting for the return and confirmation of the sale by a decretal order. And this decision is placed by the Court upon the ground that the decree of foreclosure and sale was final upon the merits, and the ulterior proceedings but a mode of executing the original decree. The same rule of construction was acted on in the case of *Michaud and Others vs. Girod and Others*, 4 Howard, 503.

"The case before us is a stronger one for an appeal than the case last mentioned. For here the decree not only decides the title to the property in dispute, and annuls the deeds under which the defendants claim, but also directs the property in dispute to be delivered to the complainant, and awards execution. And according to the last paragraph in the decree, the bill is retained merely for the purpose of adjusting the accounts referred to the Master. In all other respects, the whole of the matters brought into controversy by the bill are finally disposed of as to all of the defendants, and the bill as to them is no longer pending before the Court, and the decree which

it passed could not have been afterwards reconsidered or modified in relation to the matters decided, except upon a petition for a rehearing, within the time prescribed by the rules of this Court regulating proceedings in equity in the Circuit Courts. If these appellants, therefore, must wait until the accounts are reported by the Master and confirmed by the Court, they will be subjected to irreparable injury. For the lands and slaves which they claim will be taken out of their possession and sold, and the proceeds distributed among the creditors of the bankrupt, before they can have an opportunity of being heard in this court in defense of their rights. We think, upon sound principles of construction, as well as upon the authority of the cases referred to, that such is not the meaning of the acts of Congress. *And when the decree decides the right to the property in contest, and directs it to be delivered up by the defendant to the complainant, or directs it to be sold, or directs the defendant to pay a certain sum of money to the complainant, and the complainant is entitled to have such decree carried immediately into execution, the decree must be regarded as a final one to that extent, and authorizes an appeal to this Court, although so much of the bill is retained in the Circuit Court as is necessary for the purpose of adjusting by a further decree the accounts between the parties pursuant to the decree passed."*

This rule has been recognized and applied many times in this Court, as appears by the following cases:

Thompson vs. Dean, 7 Wall. 342 (at p. 346);
French vs. Shoemaker, 12 Wall. 86 (at p. 98); *Bostwick vs. Brinkerhoff*, 106 U. S. 3;
Grant vs. Phoenix Co., 106 U. S. 429; *Winthrop Iron Co. vs. Meeker*, 109 U. S. 180;

St. Louis Ry. vs. Southern Ex. Co., 108 U. S. 24 (at p. 28); *M., K. & T. R. R. vs. Dinsmore*, 108 U. S. 30; *Keystone Iron Co. vs. Martin*, 132 U. S. 91; *Lewisburg Bank vs. Scheffey*, 140 U. S. at p. 452.

SECOND. The Federal questions involved, and the defenses of the defendant based on the claim that the act of 1906 impairs the obligations of its contract as expressed in its charter from the State, and that both said act and the judgment of the Court enforcing it take the defendant's property without due process of law, are set up in the answer. These Federal questions were set up in oral argument and in the briefs on the merits. They were set up again in the application for a rehearing. The Federal questions raised by the defendant were insisted upon at every stage of the proceedings.

The fact that the State Court did not pass on the Federal rights specially set up of record does not eliminate those questions from the case. This Court will decide the Federal questions if the necessary effect of the judgment of the State Court is to deny the Federal right so set up, and which, if recognized and enforced, would require a different judgment.

C. B. & Q. Railroad vs. Drainage Commission,
200 U. S. 561.

As shown in our original brief, this Court will find for itself, irrespective of the judgment of the State Court, what our contract rights were which we claim were violated by the act of 1906, and what our property rights were which we claim were taken for public purposes without compensation, and, therefore, without due process of law,

in violation of the Fourteenth Amendment to the Constitution of the United States.

II.

In view of the decisions of this Court in *Chicago, Burlington, etc., Railroad vs. Chicago*, 166 U. S. 226; *Fayerweather vs. Rich*, 195 U. S. 276, and *Union Transit Co. vs. Kentucky*, 199 U. S. 202, we do not deem it necessary to discuss in detail the proposition that the judgment of a State Court, even if it be authorized by a statute, whereby private property is taken for the State, or under its direction, for public use, ^{which is a public use} is upon principle and authority wanting in the due process of law required by the Fourteenth Amendment of the Constitution of the United States. The same principle applies to a statute of a State.

If the State had no property rights in the property and improvements bought and constructed with the money of the defendant and its predecessors in title, then the act of 1906, which directed the officials appointed by the Governor to take possession of and administer the said property without compensation, is void, and the judgment of the Supreme Court, in substantially enforcing said statute, was equally void.

If the Supreme Court of Louisiana, irrespective of said statute, ordered the defendant to deliver up said property to the State without compensation, it is also void.

In considering these questions, this Court will regard substance and not form. Escape cannot be had by the State Court holding arbitrarily that the property taken for public purposes did not belong to the claimant. If there should be a substantial controversy between the

State and the claimant as to whether the property taken without compensation belonged to the State or the claimant, and the State Court should resolve that controversy in favor of the State, then it might be well said that the decision of the State Court was wrong, and this Court would not review it. But in this case the State had no claim of title, or color of title, to the property ordered to be delivered up without compensation.

Respectfully submitted,

EDGAR H. FARRAR,

BENJ. T. WALDO,

WM. C. DUFOUR,

Counsel for Plaintiff in Error.